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Filed Feb. 23, 1898.

THE SUPREME COURT

OF THE

UNITED STATES.

QUINCY A. SHAW,
Plaintiff in Error,

vs.

MURRAY M. KELLOGG,
Defendant in Error.

154

REPLY BRIEF OF PLAINTIFF IN ERROR.

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I.

CORRECTIONS AS TO MATTERS OF FACT.

In our Supplemental Brief we have stated matters of fact quite fully, with references to the record; and for the most part we shall rest our statement upon what is in that brief set forth.

It seems important, however, to call attention to a few matters of fact as stated in the Supplemental Brief of defendant in error.

On page 8 of defendant's Supplemental Brief,

it is stated that in 1876 "a considerable number of miners were prospecting and mining in the mountains and upon this grant. * * * As early, at least, as 1876 the evidence shows a considerable number of miners on the grant, and the Eastern Star mine was located by three locators in April, 1876." (Record, pages 9, 80 and 81.)

An examination of the portions of the record referred to will not justify the statement as made by counsel. At page 9 of the record is a statement, contained in defendant's answer, which merely shows the location of the "Eastern Star lode," and no other prospecting or mining. At pages 80 and 81 the only reference is to the Eastern Star lode and to the possession of Mr. Herard, and the fact of his abandonment of that possession. This is a very slight foundation upon which to base the statement that a considerable number of miners were prospecting and mining on the Grant.

The effect of the evidence on page 81 of the Record is that the measurements, and sighting along stakes there mentioned, was with a view of keeping off the Grant, rather than on it, as shown by the action of Herard.

Counsel further says, on the same page of his brief:

"1876-1893. The possession has at all times been concurrent by the miners and the Grant claimants, from 1876 to the institution of this suit, the miners holding the mineral land and the Grant owners the pastoral and arable land."

The record does not justify this statement. At the pages referred to it shows that Mr. Kellogg was in possession of the Eastern Star mine, as a

lessee, by verbal contract with the owner of the Grant, and that, after the refusal of a second lease, he took possession of the mine and locked it up. It shows no distinction, such as counsel states, of mineral land held by miners, and pastoral and arable land held by the owners of the Grant.

Referring to our statement about the lease to Mr. Kellogg, counsel controverts the facts, as we urge them, and says:

"The record, on the contrary (pages 73 and 74), shows, by the evidence of the witness Adams himself, that the property leased was not the mine, but was a stamp mill, which had been, for many years before that time, upon the Grant, and which had been turned over to Mr. Adams, and there is not the slightest warrant in the record for the statement that these so-called leases related to the Eastern Star mine."

We fear that counsel has not diligently examined this record, or he would hardly have made this statement. The deed of December 10, 1885, from Gilpin to Adams, shows (page 68 of the printed record) that the owner of the Grant had made to the San Luis Gold Mining and Milling Company a lease for ninety years of the Eastern Star lode. The deed from Adams to Shaw of the fifteenth of March, 1887 (at page 71 of the printed record), shows the same fact. The examination of Mr. Adams, as a witness, was in reference to the property in controversy, which was the property designated by the defendant as the "Eastern Star mine." We quote a few lines from the evidence:

"Q. Do you know the defendant, Murray M. Kellogg? A. I do.

"Q. Are you acquainted with, and do you know the locality of that property of which he has taken possession, and is now occupying, which he calls the Eastern Star mine? A. I do." (Page 73.)

Referring to the deed from Gilpin to Adams, counsel inquires:

"Q. In that deed, and in a subsequent deed shortly afterwards made from yourself to Quincy A. Shaw, there is a reservation of a lease of property called the Eastern Star Lode and the Gold Legion Mine, the lease being to a company called The San Luis Gold Mining and Milling Company: state whether or not that company continued in possession, for any length of time, of this property under that lease? A. They did not.

"Q. What became of *the property*, so far as their occupancy and possession of it was concerned? A. They turned it over to me. (Page 73.)

* * * * * *

"Q. After *the property* had thus been surrendered to the owners of the Grant, and machinery, to a certain extent, taken away from the mill, did you have any conversation with Mr. Kellogg concerning a lease of this property? A. I did.

"Q. You may state whether or not a lease, verbal or otherwise, was made to him, at the time, for *this property?* A. I gave him a verbal lease for three months, I think, in 1887.

"Q. When did it expire? A. In December, 1887.

"Q For the purpose of his occupancy, you may state what was done in reference to this milling machinery which you had previously taken away from the premises? A. Well, after he had worked *the mine* a little while, he wanted to use the mill, and I gave him permission to use it, and I hauled parts of the machinery that was at the ranch up to the mill for him. He had it there for something like two months. He promised if I would loan him this machinery he would return it in as good order as I gave it to him. In about two

or three months I heard he had left the country and the mill, and everything, and parties were stealing the machinery. (Page 74.) * * * *

"Q. Mr. Adams, you may state whether, after the removal of this property by you, and after the expiration of the verbal lease you had given Mr. Kellogg, he subsequently made an application to you for a lease of this property. A. He did, the following spring.

"Q. State whether it was granted or refused. A. I refused it.

"Q. After the refusal of the lease to Mr. Kellogg, you may state whether or not Mr. Kellogg took possession of *this property?* A. He did take possession, and locked up the mine, and in the meantime the machinery and mill *had been* burned down.

"Q. You may state whether or not that possession which he took after you refused to give him a lease is the possession of which you are now complaining. A. Yes, sir; which he is now claiming." (Page 75.)

We submit that it is too plain to be the subject of debate, that this *property*, here mentioned in the general examination, refers to the property called the Eastern Star lode. This conclusion is further enforced by the language of the witness, at page 82. Referring to the old lease mentioned in the deed as having been made to the "San Luis Gold Mining and Milling Company," this testimony is found:

"Q. Did he [Kellogg] ever at any time have any connection with this lease of the Eastern Star mine, as mentioned in your deed? A. No, sir.

"Q. You say you had some talk with him about making a *new* lease: was he in possession of the mine or working it at the time you had the conversation? A. Yes; he had been in possession of it, but threw it up, as I stated a while ago, and left the machinery and left everything—left the coun-

try; claimed he could not make it pay; at least, that is what I understood he said." (Page 82.)

We submit that our statement of the facts in this particular, in the Supplemental Brief, is fully sustained by the record.

Counsel states, at page 11 of his brief, as to the certificate of the Surveyor-General concerning the non-mineral character of the land selected, as follows:

"No Surveyor-General has ever certified that this land is non-mineral, and such certificate, after due and proper proof, was made an essential requirement of the passing of title from the Government, from the first letter of July 26, 1860 (record, page 30), down to the final approval of the plat, under the authority of the letter of February 12, 1864."

This rather broad statement of counsel is made upon the theory that the certificate of the Surveyor-General, of date December 5, 1863 (printed record, pages 35 and 36), was disapproved and rejected by the Commissioner's letter of January 16, 1864 (printed record, page 37), and that, as no subsequent certificate of the non-mineral character of the selection was made by the Surveyor-General, it should be considered that no certificate was ever made.

This is not the theory upon which the Commissioner acted. The contention of the Commissioner, in his letter of January 16, 1864, was that the evidence furnished was not *sufficient*, in the opinion of the office, to prove that selection No. 4 did not cover valuable mineral deposits. The certificate was not rejected, but further evidence was

demanded, to justify the conclusion certified. That the Commissioner considered and acted upon this certificate and the letter which transmitted it, when supplemented by additional evidence, is shown by the letter of February 12, 1864, for, at that time, being subsequent to the letter of January 16, the Commissioner says:

"You transmit your certificate 'that the lands are not mineral and are vacant,' and state, under specific heads, 'the grounds on which' you 'have signed the certificate' and which are satisfactory to you. You report further that 'the survey, as made by Mr. Sheldon, is probably as near perfect as can be made, as the mountains at the northeast corner of the Grant are inaccessible at any time of the year.'"

The statements made in this letter are manifestly the basis—taken, of course, in connection with the other evidence which had been furnished the Commissioner—for the final conclusion in the same letter, to wit:

"The original field notes, duly verified and authenticated, must be filed in the Surveyor-General's office of Colorado. Upon bringing these to the usual satisfactory tests, and finding the same all regular and correct, *you are authorized*, in virtue of the aforesaid sixth section of the said Act of 21st June, 1860, *to approve the said survey;* but in your certificate of approval you will add the special reservation stipulated by the statute—but not to embrace mineral land, nor to interfere with any other vested rights, if such exist.

"The statute does not order the issuance of a patent. The aforesaid law of 21st June, 1860, with your plat approved in the manner indicated, will, therefore, constitute the evidence of title." (Printed Record, pages 38 and 39.)

Counsel, at the conclusion of his brief (pages

25 and 26), sets forth, in full, a motion made by him at the conclusion of the plaintiff's evidence in the trial court, for a direction to the jury to render a verdict in favor of the defendant. The motion involved five points, which, abridged, are as follows:

First.—That there was no sufficient or proper selection within the three years allowed by the statute, by reason of the uncertainty of description in the selection as then described.

Second.—Because the Act of Congress reserved mineral land, and it is conceded that the land in controversy is now mineral in character.

Third.—Because the proof of the plaintiff showed no sufficient survey within three years after selection by Watts.

Fourth.—That the approval by the Surveyor-General of the plat was subject to the provisions and conditions of the Act of Congress; that the Surveyor-General's certificate of December 5, 1863, had been rejected, and that no further certificate had been made by the Surveyor-General.

Fifth.—Because the evidence showed that William Gilpin attempted to locate the Grant, in violation of the terms of the Act of Congress, and with knowledge that he was seeking to take mineral land.

Counsel then says:

"This motion the Court sustained, instructing the jury at some length, and discussing the questions involved, and stating the reasons for directing a verdict in favor of defendant."

This statement of counsel would suggest that the Court had sustained all five of the points

urged, when, in fact, he rejected the first and third, and ignored the last part of the fourth and all of the fifth. The Court, in instructing the jury, stated, among other things, as follows:

"Objection is made that the location was not within the time limited by the Act of Congress, which was three years, and that is put upon the ground that there was no sufficient description of the tract located to make it known to the public at large where the location would be, and upon the ground that the initial point from which the survey of the tract would be extended was not a fixed and determinate point. That was declared in the paper filed with the Surveyor-General of New Mexico to be the point where the thirty-eighth parallel of latitude crosses the base of the Snowy Range, which divides the waters of the Arkansas and Del Norte rivers, at the eastern edge of the San Luis Valley. It is said that this is not sufficient to fix the location, and there should have been some monument or some natural object open to the view of all people, from which the lines should be run. Upon that I do not care to enter at length. *I shall assume that the testimony which has been delivered before you is sufficient to enable you to determine this point, and that you would determine it under the testimony to have been properly fixed.* If the location was so designated as to be understood by the public at large, I am of the opinion that the circumstance that no survey of the location was made within the three years following the passage of the act, is not material. A survey was, in fact, made in the latter part of the year 1863, and about six months after the expiration of the three years mentioned in the act. I assume, also, that the survey made by Mr. Sheldon was sufficient in form. The lines were not closed at the northeast corner; there were three or four miles of the north line, and, perhaps, a greater length of the east line, which were not laid at that time, because of the difficulty in traversing the mountains. The surveyor states, in his notes, that he found it impossi-

ble, at the season of the year in which he was carrying on the work, to proceed over the mountains, and so the lines were not laid at the time. *This survey having been accepted by the officers of the Land Department, and approved by them, it cannot be alleged that it was not in form sufficient, or that there was any defect in it, from the circumstance that a portion of the lines were omitted from the survey at the time it was made.*" (Printed Record, pages 145-6.)

The Court then takes up the one point as to the mineral character of the land. This is the one ground upon which the motion was granted, and is the subject which has been the theme of discussion in all our briefs.

II.

As to the Sufficiency of the Original Description of the Selection of Baca Grant No. 4.

Counsel now raises, for the first time in this tribunal, a contention that the original description of the selection made by the heirs of Baca under the Act of Congress, for this location No. 4, was too uncertain and indefinite upon which to base any rights.

We submit, at the outset, that this is not a question now open for consideration in this Court. As shown by the instructions already quoted, the contention was decided by the trial court adversely to the defendant in error. No cross-errors are here assigned. This is an action at law, and counsel cannot urge that the judgment, if erroneous on one ground, should, nevertheless, be affirmed,

because some other fact might justify the same verdict.

There is, however, absolutely nothing in the contention made by counsel. The initial point for the description of the square tract of land was "A point on the eastern edge of the valley of San Luis, where the 38th parallel of north latitude crosses the base of the Snowy Range, dividing the waters of the rivers Arkansas and Del Norte." (Printed record, page 32.)

The 38th parallel of north latitude was certainly a definite line, which could be ascertained with absolute precision. A line marking, at the same time, the base of a range and the edge of a valley, may be definite or indefinite, according to conditions. Undoubtedly, there are many cases where it would be exceedingly indefinite. The peculiarity, however, of the San Luis Valley and the Sangre de Cristo range, which is its eastern boundary, is that the mountains rise very abruptly from the plain below.

A great deal of evidence was taken upon this subject in the trial court, with the result that the Court concluded that the jury would be well justified in finding that this initial point was specific. Albinus Z. Sheldon, who made the government survey in 1863, testified at the trial of this cause that, from the conditions existing on the ground, it was not a serious difficulty to ascertain this point; that it was practicable to find it; that he satisfied himself that he did find it, and that no other point, east or west of the point by him selected, would be as accurate a designation of the call as the point so by him determined. (Printed Record, pages 109 and 110.)

Z. T. Duval, an experienced civil engineer, made a careful examination of the locality and adjacent country, and, after a very full statement of grades, profiles, etc., his testimony is as follows:

"Q. From your examination of this country, at the vicinity of the initial corner, the country a mile south of it, the country a mile north of it, and the country east and west of it, and northeast and southwest of the initial corner, I will ask you to state whether, in your opinion as an engineer, or whether you, as an engineer, going upon that land with this sort of a call, could locate your point of starting—that is, assuming, for the purpose of my question, that the north boundary of the Baca Grant is on the 38th parallel of latitude, east and west? A. Yes, sir.

"Q. Commencing at a point on the eastern edge of the San Luis Valley, where the 38th parallel of latitude crosses the base of the Snowy Range, dividing the waters of the Arkansas and Del Norte Rivers, with your knowledge now of the ground, could you, as a surveyor, locate that point? A. Yes, sir.

"Q. Where would you, as a surveyor, locate it with reference to the point which is now claimed as the initial corner? A. I should have located it there." (Printed record, page 123.)

Thomas L. Darby is not only an experienced civil engineer, but was employed by the Government to make a complete survey of the eastern and northern boundaries of this grant in the extreme mountainous portions. He testified on the subject of the location of the initial point as follows:

"Q. From your knowledge of the country, which is acquired both from your old survey of the north boundary and your study of the country at

that time, and from your study of the country on this recent trip, you may state whether or not it would be practicable, in your opinion, and whether you could, as a surveyor, go upon the ground and definitely locate the initial corner of the Baca grant, if you had no call except the following: 'Commencing at the eastern edge of the San Luis Valley, where the 38th parallel of latitude crosses the base of the Snowy Range dividing the waters of the Arkansas and the Del Norte rivers'—assuming, for the purpose of the question, that the north boundary of the Baca Grant No. 4 is on the 38th parallel of latitude, could you, as an engineer, with no other call than that, find the initial corner? A. Yes, sir.

"Q. You may state, if you were to locate the initial corner upon such a call, where you would locate it in reference to the point where Mr. Sheldon located it? A. I think I should locate it just about there; may be a foot or two one way or the other, but right in that immediate locality." [*De minimis non curat lex.*] (Printed record, page 134.)

Whatever the fact may be as to the certainty of this point, *a survey was made*, by Government authority, in 1863, and a monument was then planted at the place selected as the initial point. It is not contended that at that time any adverse rights existed. The earliest date fixed for any adverse rights is in 1876, nearly thirteen years after a permanent monument had been established fixing the initial point for the description of this square body of land, and fixed, too, by Government authority. Before any adverse rights had arisen, therefore, the grantees on the one side and the Government on the other were parties to the location of the land.

We have cited, in our original brief, authorities bearing upon the effect of such a survey. We,

however, venture in this connection to repeat two or three quotations:

"When it [the survey] was made, and the field notes returned to the Surveyor-General's office, and the description and plat made out in form, and approved by the Surveyor-General, it was *conclusive evidence*, as against the United States, that the land granted by the confirmation of Congress was the same described and bounded by the survey, unless an appeal was taken by either party or an opposing claimant to the Commissioner of the General Land Office. This consideration depends on the fact that the claimant and the United States were parties to the selection of the land; for, as they agreed to the survey, they are mutually bound and respectively estopped by it."

Menard's Heirs vs. Massey, 8 How., 293, 313.

"When the surveys were made and the plats returned and approved and recorded by the Surveyor-General of Illinois and Missouri, and recognized as valid at the General Land Office (as the patent to Forsyth shows it was), it binds the parties to it, the confirmee and the United States; nor can either side be heard to deny that the land granted by the Act of 1823 is the *precise* lot Forsyth was entitled to, such being the settled doctrine of this Court."

Bryan vs. Forsyth, 19 How., 334, 336.

"If the claim be to quantity and not to a specific tract capable of identification, a segregation by survey will be required, and the confirmation will then immediately attach the title to the lands segregated."

Landeau vs. Hanes, 21 Wall., 521, 530.

It is very apparent that there was nothing in the law making this Grant, which required that

the survey by the Government should be made within three years. The three-year limitation related only to "the right hereby granted to said heirs of Baca." But the right granted to the heirs of Baca was to *select* a certain quantity of vacant land, not mineral, in the territory of New Mexico, to be located by them in square bodies, not exceeding five in number. No limitation is fixed as to the time when the selection shall be surveyed. We think it is true that if the heirs were so unfortunate, in a particular selection, as to have obtained mineral land instead of non-mineral land, and this fact was ascertained after the expiration of the three years, and *before approval of survey*, they would suffer an abatement of their holding, to the extent of the mineral land then so found to have been chosen. And in such a case it would probably be the duty of the Land Department to cut out that portion of the selection found to be mineral in character and to approve a survey only for the remainder. If, on the other hand, the lands selected within the prescribed period were ascertained by the Surveyor-General to be non-mineral, at the time of survey, then, with equal certainty, the title would, upon the approval of such survey, pass to the grantees, to the full extent of the selection enclosed by the survey.

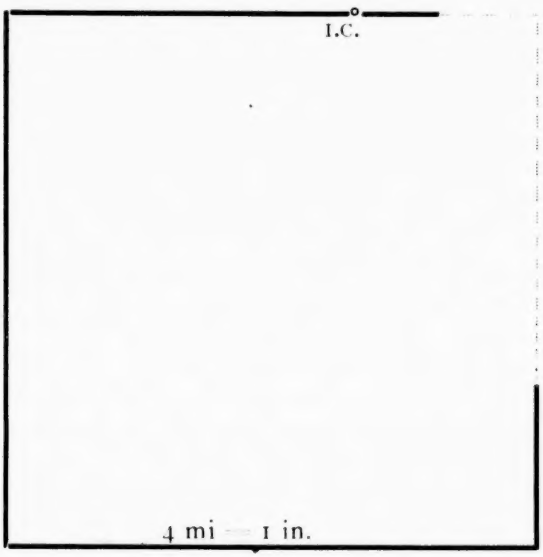
III.

Sufficiency of the Sheldon Survey.

Counsel for defendant in error contend that the uncertainty of the initial point of the selection,

as originally described prior to survey, "taken in connection with the conceded fact that for twenty-nine years the lines of the survey upon the ground to the extent of eleven miles of said grant remained wholly unclosed, unmarked, and never in fact surveyed, amply warrants the Court in holding that the indefiniteness of the original survey was not aided by any subsequent acts, as against miners and other claimants whose rights arose in the intervening period." (Defendant's Supplemental Brief, page 19.)

The following diagram shows, in solid black lines, the portion of the survey actually traced upon the ground, and marked by monuments at every half mile. The dotted lines show the portion which Mr. Sheldon did not actually traverse, and was therefore not marked by monuments on the ground:



It is to be observed that the figure required by law for this Grant was the simplest imaginable form of enclosure. The land was to be taken in *square* form. Certainly, if only two adjacent lines of a *square* are given, there is no uncertainty as to the locality of the other two sides of the figure. But when we find, actually marked by monuments on the ground, not only the whole of two adjacent sides, but also more than four-fifths of a third one, and one-third of the fourth side, and as these two last lines, extended, must intersect each other, there is no room for uncertainty as to the land which is enclosed. It is a very common experience in surveying, and especially in a mountainous country, that boundary lines will fall in inaccessible places, and that their exact location has to be determined by computation, from ascertained data, and from monuments which are in accessible places. The fact that this is so does not make the survey incomplete or indefinite, in any sense.

There was, however, a subsequent, so-called "completion survey" made of the east and north boundaries of this Grant before the institution of this suit. This supplemental survey was made under authority of the Government, and at Government expense. (Printed record, pages 105 and 107.) That survey was made by Thomas L. Darby, a witness on the trial of this cause, and, while this witness reached the northeast corner, near Crestone Peak, yet there was a mile and a half on the east line that even he could not traverse. (Printed record, page 130.) And, as to the third mile east of the initial corner, on the north boundary, his notes say:

"Impossible to take any witnesses. Offsets were made, to avoid bluffs and very heavy slide rock." (Printed record, page 107.)

While the Government did, in 1892, have this further survey made of the boundary line of the northeast corner of the Grant, it is difficult to see how, for any practical purpose, this additional survey is of value or makes the boundaries of the Grant any more specific than they were under the Sheldon survey.

The Sheldon survey, however, having been made under official sanction and approved by the Surveyor-General, under the direct authority of the Commissioner of the General Land Office, the trial Court was undoubtedly correct in saying:

"This survey having been accepted by the officers of the Land Department and approved by them, it cannot be alleged that it was not in form sufficient, or that there was any defect in it, from the circumstance that a portion of the lines were omitted from the survey at the time when it was made."

Certainly, there is nothing in the contention urged by the defendant in error upon this point, which can avail him in this Court, on this hearing.

IV.

Land Office Adjudications Relating to Baca Grant.

In the brief purporting to be filed on behalf of the United States on December 13, 1897, allusion is made to two decisions made in the Land Office, under the Act of Congress here involved, being cases relating to *Baca Float No. 3*, 12 Land De-

cisions, 676, and 13 Land Decisions, 624. Counsel for the Government urge these authorities as showing that the Secretary of the Interior did not deem the question of the mineral or non-mineral character of the land as determined until he or some officer of the Government thereto duly authorized had judicially passed upon the matter or until a patent was issued; and counsel for defendant in error now, in his Supplemental Brief, refers to and quotes from the same decisions.

These decisions from the Land Department, as we look at the case, instead of being of assistance to the defendant in error, corroborate and support the argument which we have made, to the effect that by the survey and its approval in 1864, the title to Baca Grant No. 4, had passed from the Government to private individuals.

The decisions referred to, relating to Baca Grant No. 3, were based upon an application to survey, that Grant never having passed to the stage which ours has reached, of a survey actually approved by the Surveyor-General, under the authority of the Commissioner of the General Land Office.

The decision of the Secretary of the Interior in *Baca Float No. 3* (12 L. D., 676), was to the effect that before an official survey should be authorized, a hearing should be had with a view of determining the character of the land embraced in the location; and this was manifestly upon the theory, for which we have always contended, that an approved Government survey would pass the title. So long as there had been no approved Government survey, the case was open for consideration as to the character of the land.

This distinction is recognized in the very quotation made by counsel, at page 22 of his brief, which includes the following sentence:

"And the department may, at any time *before the title passes from the Government*, require the claimants to show that the land is not mineral, although the character of the land may not have been known to claimants at the date of selection or location."

If, in our case, the land had been discovered to be in fact mineral prior to March 18, 1864, when the plat and survey were approved by the Surveyor-General, then a like question would have arisen. It is possible that a like discovery of mineral, made prior to May 4, 1864, would have prevented title passing to us, if the Commissioner had then made objection to the approval of the plat and survey by the Surveyor-General. Our contention is, that after a refusal by the Commissioner to authorize the approval of the survey until the character of the land, as to mineral, was ascertained, and after all evidence had been furnished which he required upon the subject, his direction then to approve the survey and plat, and his acceptance of the approved survey and plat without objection, terminate the proceedings. Title had then passed, and nothing further was open for the consideration of the Land Department thereafter.

The very decisions in 12 and 13 L. D. seem to imply that such approval of survey would pass the title. No allusion is made in those decisions to a patent, and *survey* is not authorized until after a hearing as to the mineral or non-mineral character of the land. This, however, is exactly

the line of policy pursued by Commissioner Edmunds, under the same act, in 1863, where, before approval of the survey, he required evidence that the land selected was not mineral in character. (See letter of January 16, 1864, printed record, page 37.)

Doubtless, this Baca Grant No. 4, was in the mind of the Assistant Secretary of the Interior, when, in 12 L. D., page 681, he says:

"Other locations made upon this measure of quantity, and in the hands of other assignees, have been perfected and *passed beyond the control of this Department.*

We have quoted, in our original brief, from a decision of the Secretary of the Interior, in 5 L. D., referring to the same Baca Grant No. 3, in which Secretary Lamar fully recognized our contention that, as to Baca Grant No. 4, the mineral or non-mineral character of the land had been passed upon by competent authority, and that the title had passed from the Government and vested in private individuals, and that the Land Office had no authority to reopen the question, and that the land could no longer be regarded as a part of the public domain. (5 L. D., 705.)

We very respectfully but earnestly insist that this Grant should be maintained in its integrity; that under well settled principles, announced by this Court for many years, and which have ripened into rules of property, the title to this land, as it was known at the time of the approval of the survey and plat, must be deemed to have passed from the Government and vested in the grantees named in the Act of Congress, and that subse-

quent grantees of that land should not now have their possession molested by persons who claim to have discovered mineral many years after the survey was made and the land segregated from the public domain.

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